In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-397

ALLRIGHT MISSOURI, INC., PHIL JACOBS BUILDING CORPORATION AND JOSEPH D. CASSATA AND ANNA MARIE CASSATA,

Petitioners,

vs.

CIVIC PLAZA REDEVELOPMENT CORPORATION, THE CITY OF KANSAS CITY, MISSOURI, AND JOHN DANFORTH, ATTORNEY GENERAL OF THE STATE OF MISSOURI,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Missouri entered in this matter on June 14, 1976.

OPINIONS BELOW

The June 14, 1976, opinion of the Supreme Court for the State of Missouri, whose judgment is herein sought to be reviewed, is yet unreported and is reprinted in separate Appendix A to this Petition for Writ of Certiorari to the Supreme Court of the State of Missouri. The prior opinion of the Missouri Court of Appeals, Kansas City District and of the Circuit Court of Jackson County, Missouri is also reprinted in Appendix A of this Petition. -p. A30

JURISDICTION

The judgment of the Missouri Supreme Court was entered June 14, 1976. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3).

QUESTION PRESENTED

In 1945, the following provision was enacted to the Missouri Constitution and provides for the elimination of blight by way of private redevelopment:

> Section 21. Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest. (2 V.A.M.S., Mo. Const. 1945, Art. 6, §21).

The Supreme Court of the State of Missouri held in its decision rendered on June 14, 1976, that, by virtue of this provision and other statutory enactments a city council could determine that an area was blighted, in need of redevelopment, and subject to the power of eminent domain given to the city by way of Article 6, §21 of the Missouri Constitution of 1945, upon evidence which created only a "fairly debatable or reasonably doubtful" question of fact.

The question thus presented is:

Does the determination of a legislative body that an area of property is blighted and in need of redevelopment constitute arbitrary and unreasonable action and a denial of due process under both the Missouri and Federal Constitutions where such a determination can be made upon evidence that is only "fairly debatable or reasonably doubtful".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const., Art. XIV, Sec. 1).

This case also involved the following provisions of the Missouri Constitution of 1945:

Article 1, §10:

> That no person shall be deprived of life, liberty or property without due process of law. (1 V.A.M.S., Mo. Const. 1945, Art. 1, §10).

Article 1, §28:

That private property shall not be taken for private use with or without compensation, unless by consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in the manner prescribed by law; and that when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public. (1 V.A.M.S., Mo. Const. 1945, Art. 1, §28).

Article 6, §21:

Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest. (1 V.A.M.S., Mo. Const. 1945, Art. 6, §21).

This case involved the Missouri Rule of Civil Procedure 73.01(3) which provides as follows:

On appellate review:

(a) The court shall review the case upon both the law and the evidence as in suits of an equitable nature.

(b) Due regard shall be given to the opportunity of the trial court to have judged the credibility of witnesses.

(c) The court shall consider admissible evidence which was rejected by the trial court and preserved. The court may order that any preferred evidence which was rejected by the trial court and not preserved, be taken by deposition or by reference to a master under Rule 68.03, and returned to the appellate court. (Adopted March 29, 1974, effective Jan. 1, 1975.) (Mo. R. Civ. P. 73.01(3)).

This case also involved Chapter 353 of the Missouri Revised Statutes (1969) commonly known as the Urban Redevelopment Corporations Law, the text of which is printed in Appendix B of this Petition.

STATEMENT OF THE CASE

Civic Plaza Redevelopment Corporation is a Missouri corporation organized and existing pursuant to Chapter 353, R.S.Mo., Urban Redevelopment Corporations Law. (Appendix B). Petitioners are owners and lessors of real property within an area proposed to be taken for urban redevelopment by the Civic Plaza Redevelopment Corporation.

On March 20, 1970, the City Council of Kansas City, Missouri, enacted Ordinance #37349 (Appendix B) approving the Redevelopment Plan submitted by Civic Plaza Redevelopment Corporation. Under Chapter 353, R.S.Mo. (1969), an urban redevelopment corporation may exercise the power of eminent domain to acquire property necessary to accomplish its objective. (Appendix B, V.A.M.S. 353.130 (2 & 3)). Petitioners filed an injunctive and de-

claratory judgment action against Civic Plaza, the City of Kansas City, Missouri, and John Danforth, Attorney General of the State of Missouri, alleging that the action of the City Council in enacting Ordinance #39349 was arbitrary, unreasonable and void and that Chapter 36, The Urban Redevelopment Ordinance of the Revised Ordinances of Kansas City, Missouri, and Chapter 353, R.S.Mo. 1969, The Urban Redevelopment Corporation Law, of the Revised Statutes of Missouri, were unconstitutional and void. The Circuit Court of Jackson County, Missouri, Division 4, held that Ordinance #37349 was illegal and void as being based upon arbitrary and unreasonable findings by the City Council and as constituting the taking of personal property for private purposes without public use in violation of plaintiffs' rights under Article 1, Sections 13 and 28 and Article 6, Section 21 of the Missouri Constitution and under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

Civic Plaza Redevelopment Corporation appealed from that ruling to the Missouri Court of Appeals, Kansas City District. That Court upheld the trial court insofar as the trial court determined the City Council's action (Ordinance #37349) to be invalid as an arbitrary and unreasonable action in violation of appellees' (now petitioners') constitutional rights.

Civic Plaza Redevelopment Corporation obtained transfer to the Missouri Supreme Court *en banc* which heard oral argument on January 19, 1976. The Missouri Supreme Court's opinion, reprinted in Appendix A, reversed the trial court and ordered judgment in favor of Civic Plaza Redevelopment Corporation. Petitioners' timely Motion for Rehearing was denied July 12, 1976.

REASONS FOR GRANTING THE WRIT

This case concerns the right of property owners and interest holders to be protected from arbitrary and unreasonable legislative action which can deprive them of their property interests. The determination by the Missouri Supreme Court that the decision of a legislative body (here a City Council) will be tested by a standard of review that fails to protect Fourteenth Amendment property rights presents an important constitutional question. As can be seen from the appellate opinions attached to this Petition, only the barest minimum of evidence supporting the redevelopment project was presented to the City Council of Kansas City, Missouri, yet when tested by the standard of review used by the Missouri Supreme Court, minimal evidence was held sufficient to uphold the legislative finding. Accordingly, an important question of constitutional law is presented regarding judicial review of legislative actions which touch the relatively recent concept of urban redevelopment by private rather than public means, using the power of eminent domain.

Article 6, Section 21 of the 1945 Constitution of Missouri altered the fundamental concepts regarding the inviolate rights of private property owners. The concept of private redevelopment of blighted areas created a new dimension in the power of eminent domain that allows for the taking of private property for private redevelopment, because such redevelopment of blighted area is classified as a public purpose. The Missouri Supreme Court has upheld urban redevelopment of blighted area as a public purpose and thus allowed the transfer of eminent domain powers to private redevelopment corporations. *Annbar Associates* v. *Westside Redevelopment Corporation*, 397 S.W.2d 635 (Mo. en banc, 1965).

The critical constitutional issue arises when a private redevelopment corporation acquires the power of eminent domain and proceeds to take private property. The threshold question in such an issue is whether the property is blighted. Absent blight there can be no public purpose to the taking of land by the private redeveloper. "Blight" is a question to be decided by legislative bodies prior to the making of a contract with the private redeveloper.

Clearly, the issue at hand is by what standards should a legislative body's determination on the question of blight be reviewed when judicial scrutiny is requested.

The Missouri Supreme Court set forth the standard of judicial review when it stated:

> Unless it should appear that the conclusion of the City's legislative body in the respect in issue . . . is clearly arbitrary and unreasonable, we cannot substitute our opinion for that of the City's . . . . If the City's action . . . is reasonably doubtful or even fairly debatable "we cannot substitute our opinion for that of the City Council." *Parking Systems, Inc.* v. *Kansas City Downtown Redevelopment Corporation,* 518 S.W.2d 11 at 16 (Mo., 1974).

The issue of reasonableness or arbitrariness turns on the facts of each case, *Landau* v. *Levin,* 213 S.W.2d 483 (Mo. en banc, 1948), and parties seeking to void a municipal ordinance must carry the burden of proof. *State ex inf. Taylor ex rel. Kansas City* v. *North Kansas City,* 228 S.W.2d 762 (Mo. en banc, 1950).

That burden of proof is a heavy one and requires a showing upon clear and cogent evidence that a legislative body was arbitrary and unreasonable in using its determination.

The trial court which alone had the ability to view the witnesses determined that the evidence showed an arbitrary and unreasonable determination by the City Council of Kansas City, Missouri. (FINDINGS OF FACT #1-33, Appendix A). This view was supported by the Missouri Court of Appeals, Kansas City District. (Appendix A). The Missouri Supreme Court reviewed the evidence on appeal and stated:

> The evidence on which the City's legislative body made its determination did not compel a conclusion that the area was blighted and the plan proposed for its redevelopment necessary and in the public interest. Nor did it compel a conclusion that it was not. There was room for reasonable differences of opinion and fair debate on this question. From evidence before it, this legislative body reasonably could have determined, as it did, that the area was "blighted" within the meaning of applicable statutes and ordinances. Hence, it may not be said that the adoption of the ordinance approving Civic Plaza's application amounted to an arbitrary exercise of legislative power. Allright failed to meet its burden of proof. (Appendix A, Mo. S.Ct. Opinion, page A37).

The evidence referred to by the Missouri Supreme Court consisted of:

(1) Hearings and report by the Committee on Plans and Zoning (a copy of which was not before the Court)

(2) 24 photographs of the area

(3) A 2-volume real estate appraisal

(4) Hearings by the City Council

The factual evidence that is required of Appellant to enable the City Council to validly make a finding of blight, is specifically enumerated in Section 36.5.1, Revised Ordinances of Kansas City, where it states:

"Sec. 36.5.1 Supporting evidence of blight.

Any application for approval of a development plan must be supported by factual evidence of blight.

(1) Evidence must relate to area generally.

(2) Evidence must relate to each specific property proposed to be acquired.

(3) Evidence must be sufficient to show that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, the properties involved are either economic or social liability; or are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.

(4) The city plan commission shall analyze the evidence submitted and, to the extent necessary, conduct its own study in order to prepare a report to the city council either confirming the conditions of blight or setting out such exceptions or modifications as may be appropriate.

(5) Evidence must be sufficiently complete that city council can make finding of blight as required by state statute. (C.S. No. 36419, Sec. A, 2-28-69)."

None of the evidence adduced at trial tended to show economic or social liability, or that the area was conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes. Despite this, and only because there was some evidence regarding each property, the Missouri Supreme Court held that a question of blight existed (Appendix A, p. A37) and that the discretionary power of the City Council should not be invaded by a judicial body.

The Supreme Court of Missouri, in its opinions in *Parking Systems, supra,* and in this case, has stated that any threadbare evidence regarding blight is sufficient if a reasonably doubtful or fairly debatable question of fact arises. By means of this standard, violence is being done to Petitioners' Fourteenth Amendment rights. A more reasonable standard, giving due regard to Fourteenth Amendment rights, is a standard of substantial evidence which creates the question of fact for determination by the legislative body.

Petitioners request review by the Court of this very issue: the standards by which a legislative body may determine blight and thus lawfully invest a private redevelopment corporation with the power of eminent domain.

CONCLUSION

WHEREFORE, Petitioners pray that a Writ of Certiorari issue from this Honorable Court to review the judgment of the Supreme Court of Missouri in *Allright Missouri, Inc., et al.* v. *Civic Plaza Redevelopment Corporation, et al.* In the event that the Petition is granted, Petitioners pray

that the judgment of the Court below be reversed, that the cause be remanded, and that the Court below be directed to affirm the judgment of the Trial Court.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF MISSOURI,
SIXTEENTH JUDICIAL CIRCUIT.

No. 735782

Div. 4

ALLRIGHT MISSOURI, INC., et al.,
Plaintiffs,

-vs-

CIVIC PLAZA REDEVELOPMENT CORPORATION, et al.,
Defendants.

ORDER

(Filed July 20, 1973)

Judgment is hereby entered in favor of plaintiffs and against defendants. Ordinance Number 37349 of the City of Kansas City is declared void. Defendants, their agents, servants and employees, are enjoined from taking any actions to implement the provisions of said ordinance. The costs of this action are assessed against defendants.

Dated July 20, 1973.

/s/ Alvin C. Randall
Judge

IN THE CIRCUIT COURT OF MISSOURI,
SIXTEENTH JUDICIAL CIRCUIT.

No. 735782

Div. 4

ALLRIGHT MISSOURI, INC., et al.,
Plaintiffs,

-vs-

THE CIVIC PLAZA REDEVELOPMENT CORPORATION, et al.,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed July 20, 1973)

Now on this 20th day of July 1973, the Court having heard all of the testimony in the above matter, having examined all exhibits and stipulations filed herein, and having viewed the land and improvements in question, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. "Urban Redevelopment Law" shall mean Chapter 353 of the Revised Statutes of Missouri (1960), as amended.

2. "Urban Redevelopment Ordinance" shall mean Chapter 36 of the Code of General Ordinances of Kansas City, Missouri, as amended.

3. Civic Plaza Redevelopment Corporation, hereinafter called "Civic Plaza," an urban redevelopment corporation duly organized and existing pursuant to the Urban Redevelopment Corporation Law of Missouri, Chapter 353, Revised Statutes of Missouri (1969), as amended.

4. On March 9, 1967, Civic Plaza filed with the City Clerk of Kansas City, Missouri, an application for approval of a development plan. (Plaintiff's Exhibit No. 7).

5. On April 30, 1969, an amended Development Plan was filed by Civic Plaza with the City Clerk of Kansas City, Missouri. (Plaintiff's Exhibit No. 8).

6. The City Planning Commission of the City of Kansas City, Missouri, upon due notice and with a quorum present, held a public hearing May 22, 1969, on the amended Civic Plaza Development Plan.

7. The City Plan Commission, at its meeting on June 19, 1969, with a quorum present, voted to recommend to the City Council of Kansas City, that the Civic Plaza Development Plan be DISAPPROVED. (Plaintiff's Exhibit No. 6).

8. The reasons for DISAPPROVAL by the City Planning Commission of Civic Plaza's Amended Redevelopment Plan were:

(1) The area could be successfully redeveloped without applying the tax concessions embodied in the urban redevelopment ordinances and laws. There is substantial evidence of new developments within the area such as the Kansas City Business College and the property owned by Mr. Cassada and the Civic Plaza National Bank itself. It also does not appear advisable to include the existing Red Cross facilities within the redevelopment area.

(2) The various phases of the Development Plan would not be an orderly development of the area. Specifically, the development of necessary parking facilities in Phase 6 of the area as a final development scheduled to be some four years after completion of all of the traffic generating uses within the area.

(3) The Development Plan is vague with reference to construction in Phases 5, 6 and 7. In Section VI, C and D, the construction in Phases 5 and 6 is simply stated as subsurface parking area and surface park. There are no other specifications as to what will be built. In VI, E, Phase 7 is described as "an office building and parking structure of at least 14 stories in height shall be constructed."

9. Ordinance No. 36419, City of Kansas City, Missouri, for Urban Redevelopment. (Plaintiff's Exhibit No. 13).

10. Letter of May 2, 1969, from Ralph H. Ochsner, Acting Director, City Development Department, Kansas City, Missouri, to Mr. Don Jackson, Chairman, City Planning Commission, setting for deficiencies in compliance with Redevelopment Ordinance of Kansas City, Missouri, No. 36419. (Plaintiff's Exhibit No. 14).

11. The Civic Plaza Redevelopment Plan does not comply with the requirements of Ordinance No. 36419 for Urban Redevelopment for the reasons that:

(1) Civic Plaza has not at any time supported, by factual evidence, that the area to be redeveloped is obsolete, decadent, substandard, unsanitary or blighted to substantiate causation for redevelopment within the purview of Chapter 36, Ordinance of Kansas City.

(2) Civic Plaza has not given the required information for proposed improvements of the Puritan and Red Cross buildings or the type of repair or alterations needed for such buildings, the approximate period of time during which such improvements, repairs or alterations are to be made, and the way said buildings qualify for inclusion in the redevelopment project.

(3) There is no adequate statement of the type, number and character of each new industrial, commercial, resi-

dential or other buildings or improvements to be erected or made.

(4) There is no detailed statement of the proposed method of financing the redevelopment, nor satisfactory evidence that sufficient funds or securities are immediately available and will be used for normal equity financing of the entire development, and will remain available until development is started.

(5) Civic Plaza has failed to provide satisfactory evidence that sufficient financing to acquire and clear the land involved in the redevelopment plan.

(6) The Civic Plaza Plan does NOT give the City of Kansas City appropriate control over the right of assignment of its plan to some other entity to assure that the intention and purpose of the proposed redevelopment project will be carried out.

(7) Civic Plaza has failed to prove the necessity or advisability of its plan for the area involved by the criteria for blight as set forth in Chapter 36, Urban Redevelopment Code of General Ordinances, City of Kansas City, Missouri.

(8) Civic Plaza has not proven, nor the City of Kansas City determined, because of age, obsolescence, inadequate or outmoded design or physical deterioration the area involved has become an economic and social deterioration, nor further that the condition of the locality is conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.

12. Ordinance No. 37167 was introduced to the City Council and referred to the Planning and Zoning Committee for study and public hearing.

13. A public hearing was held on September 25, 1969, before the Plans and Zoning Committee. (Plaintiff's Exhibit No. 10).

14. The Planning and Zoning Committee of the City Council recommended "Do Pass" on Ordinance No. 37167.

15. The City Council, during its business session on March 20, 1970, discussed the civic plan and passed Committee Substitute Ordinance No. 37349.

16. The City and Civic Plaza signed the contract approved by Committee Substitute Ordinance 37349, said contract being dated April 7, 1970. (Plaintiff's Exhibit No. 1).

17. Plaintiffs are owners and/or lessees of property located in the redevelopment area described in Committee Substitute Ordinance No. 37349.

18. The purported funds and securities "immediately" available for financing the redevelopment plan are (1) as set forth in a "sponsors-principals" letter to the City of February 11, 1970, and (2) qualified loan resolution of Building Leasing Corporation. (Plaintiff's Exhibit No. 4).

19. The "letter" and "loan" of financing is not a detailed statement of funds and securities immediately available, is unsubstantiated as to documentation, proof and authentication, unsigned, unaudited and uancceptable as not in accordance with standard business practices for evidencing financial ability and commitment for Urban Redevelopment.

20. The sponsors and principals of financing and a letter from City Bond and Mortgage Company of Kansas City, *specifically* stating that no definite financial commitment could be made, are the only documents shown by

the evidence to have been submitted to the City pursuant to Section 36.7 (o) of the Urban Redevelopment Ordinances relating to the method of financing the redevelopment. (Defendant's Exhibit No. 10, pages 13-14).

21. The valuation set forth in Plaintiff's Exhibit No. 2, Real Estate Appraisal of Project Area Tracts of Land were refuted by owners and/or representatives thereof as follows:

(a) Kansas City Business College, Inc. (Max Bagby), Tract 5;

(b) Alfred K. Simpson, Jr., Tract 7;

(c) James F. Lillis, Jr., Tract 10;

(d) Vincent J. Como, Tract 12;

(e) A. B. Colfry, Tract 14;

(f) Mrs. Hortense G. Brozman, Tract 15;

(g) Representative of Communication Workers of America, Tract 13;

(h) The American National Red Cross, Tracts 19 and 21;

(i) Phil Jacobs Building Corporation, Tract 22;

(j) Laura Olive Courreger, Tract 24;

(k) Mr. Joseph D. Cassata, Tract 26;

(l) Sam Benanti, Tracts 3 and 6;

(m) Barnes H. Romine, Jr., Tract 1.

22. The Real Estate Appraisal of Project Area, Plaintiff's Exhibit No. 2, for 26 tracts of land included in the Redevelopment Area does not accurately reflect the true valuation of said tracts, and consequently, Civic Plaza's purposed financing is insufficient in view of the evidence submitted of true valuation by tract owners and/or representatives.

23. The Project Plan submitted in evidence is not in conformity with subsequent purported modification, e.g. Victor F. Swyden, Councilman; letter to Mr. A. E. Jacobs, President, Kansas City Business College. (Plaintiff's Exhibit No. 19). No showing is made that the Project Plan has been modified by approval of the City Plan Commission and City Council or in conformity with Section 36.10 Urban Redevelopment Ordinances.

24. No evidence of environmental factors were submitted to the City on the issue of blight of the redevelopment area.

25. No evidence of progressive deterioration of the area causing wasteful expenditures of public funds for policing, public facilities and services was submitted to the City.

26. The evidence submitted by Civic Plaza and by the individual owners/lessees clearly reflects that the structures and land in the redevelopment area that have been maintained in good condition, that new construction has been completed within three years in the area, that businesses were continuing to remodel and improve their physical facilities, that extensive business commerce was being conducted daily in the redevelopment area, that organizations such as the American Red Cross were performing vital civic activity in the area in facilities maintained and in good condition, that new businesses, such as the Kansas City Business College and Civic Plaza Bank, have successfully located or relocated in the redevelopment area in recent times because of its attractiveness and conduciveness to businesses.

27. Seventy-three (73%) percent of the redevelopment area is open land; sixty-six (66%) percent is presently used for surface parking.

28. There is no evidence of deteriorated buildings; all tracts of land within the redevelopment area on which structures are located are in use as individual business sites or in conjunction with adjacent business sites; there are no abandoned or structurally substandard buildings requiring demolition and clearance.

29. The contract between the City and Civic Plaza requires only that Civic Plaza acquire and clear the land, or make provision therefor, in the redevelopment area. The obligation may be passed on to a purchaser of said property from Civic Plaza. At any time before or after clearance, Civic Plaza may sell the property, free and clear of all restrictions (save clearance), without insuring the development of the property and providing expressly that redevelopment may cease in part or wholly in the area.

30. Civic Plaza Redevelopment Corporation, an urban redevelopment corporation, is a "shell" corporation with no assets nor financial worth, and created for the sole purpose of contracting with the City.

31. Conditional guarantee for financial assistance to Civic Plaza by its sponsors and principals is conditional on obtaining long-term financing and limited to acquisition and clearance of the land. (Plaintiffs' Exhibit No. 4, Barkett letter of February 11, 1970, to the City Council).

32. The assessed valuation of the six-block redevelopment are for 1969 is $284,330.00 for land, $221,690.00 for buildings, totaling $506,020.00; Tax payments for 1969 for said area are City, $7,691.52; Park, $1,421.80; County, $29,-804.51; totaling $38,917.83. (Plaintiffs' Exhibit No. 4).

33. Plaintiff's Exhibit No. 5 is Committee Substitute for Ordinance No. 37349, Civic Plaza's Amended Development Plan, and Ordinance Summary.

CONCLUSIONS OF LAW

1. The City Council's determination that the Project Area was "blighted" was arbitrary and unreasonable and not in compliance with the requirements of Section 36.5.1 of the Urban Redevelopment Ordinances and Chapter 353 Missouri Statutes.

2. The City Council's determination that the Project Area by reason of age, obsolesence, inadequate or outmoded design or physical deterioration, had become an economic and social liability and that such conditions were conducive to ill health, transmission of disease and inability to pay reasonable taxes, was unreasonable and arbitrary and therefore Committee Substitute Ordinance No. 37349 and the Contract between Civic Plaza and the City (Plaintiff's Exhibit No. 1), made by authority thereof, are void.

3. The City Planning Commission's Disapproval of Civic Plaza's Plan, Plaintiff's Exhibit No. 6, is pursuant to Section 36.9, Urban Redevelopment Ordinances, conclusive evidence of the facts that:

(a) The area is not blighted, and that the development plan is unnecessary and inadvisable to effectuate the declared public purposes of the Ordinances;

(b) The development plan is not necessary due to substantial new development in the area;

(c) The area can be successfully redeveloped without applying the tax concessions embodied in the urban redevelopment ordinances and laws;

(d) Named existing facilities should not be included in a redevelopment plan;

(e) That the various phases of the Plan would not be an orderly development of the area, vague, impractical, and not in the public interest.

4. The City Council's determination that the redevelopment area is blighted is arbitrary and unreasonable in that:

(a) Seventy-three (73%) percent of the property is open and cleared land;

(b) Sixty-six (66%) percent of the property is currently used as surface parking;

(c) No buildings are shown to be deteriorated or substandard to a degree requiring clearance;

(d) New businesses and substantial private development is occurring in the area;

(e) Existing buildings are maintained, used and being improved as part of an actual business community in the area;

(f) The redevelopment area is not an economic and social liability;

(g) The area is able and is paying reasonable taxes;

(h) There is no detrimentally extreme environmental or economic conditions existent in the redevelopment area.

5. Committee Substitute Ordinance No. 37349 and the Contract between the City and Civic Plaza executed pursuant thereto are void as a taking of private property for private purposes without public use in the project area based on an arbitrary and unreasonable determination of blight in violation of Plaintiffs' rights under Article I, Sections 13 and 28, and Article VI, Section 21 of the Missouri Constitution and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

6. Chapter 36, Urban Redevelopment Ordinances of Kansas City, Missouri, requires the City Council to determine that ". . . sufficient funds or securities are immediately available and will be used for normal equity financing of the entire development proposed. . ." (Sec. 36.7(o)). The determination by the City Council was immediately available and would be used for financing of the entire development proposed, was arbitrary and unreasonable in that:

(1) Civic Plaza Redevelopment Corporation is a "shell" corporation with no funds or securities to commence or complete the proposed plan.

(2) The sponsors and principals of Civic Plaza have not shown funds or securities "immediately available" appropriately audited in accordance with standard accounting procedures.

(3) The sponsors and principals of Civic Plaza have made no commitment of funds to Civic Plaza and have limited and qualified their stated guarantee of performance of Civic Plaza to the commencement ". . . of the project and subject to obtaining long-term financing." (Letter of February 11, 1970, Plaintiffs' Exhibit No. 4).

(4) Building Leasing Corporation's loan resolution qualifies and limits its loan authorization for Civic Plaza to:

(a) Acquisition and clearance of project land;

(b) Civic Plaza's obtaining long-term financing;

(c) Any such loan as to terms and interest as shall be determined to be of the best interest of Building Leasing Corporation in the Chairman and/or President's ". . . sole judgment".

7. The only other evidence submitted regarding financing was a letter from City Bond and Mortgage Company that specifically denied a definite commitment of financing, and moreover, a required assurance ". . . this project has every chance of becoming an actuality." (Defendants' Exhibit No. 10, Public Hearing, Planning and Zoning Committee, pages 13-14).

8. The Committee Substitute Ordinance No. 37349 and the Contract between the City and Civic Plaza executed pursuant thereto are void as an unlawful delegation of the power of eminent domain to Civic Plaza to take private property for private purposes and not for the necessary and advisable public purposes declared in Section 36.2 of the Kansas City Urban Redevelopment Ordinances, and is in violation of Plaintiffs' rights under Article I, Section 13 and Section 28, and Article VI, Section 21, of the Missouri Constitution, and the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

9. The redevelopment plan does not propose to demolish the Civic Plaza National Bank Building, which is within the area to be redeveloped. It is a good building, but is certainly no better than, if as good as, the average buildings that are to be demolished. They are all good buildings, with the exception of one very small building, which is apparently not being used.

10. We are aware that a high degree of proof is necessary, under the law, to justify the action of a court declaring an ordinance void, even though such "legislation" may otherwise result in the taking of private property without a judicial hearing, and that there must be a showing that the action of the City Council is arbitrary. However, this does not mean that in no circumstances can a

court properly declare an ordinance void, or that a City Council can completely ignore the legal limitations on its power. It is our opinion that if the City can successfully declare the area in question to be blighted, there is probably no area in the city which is not under the threat of destruction. It is common knowledge that when a redevelopment plan is proposed, or even when there is a public announcement that such a proposal is being considered, it has the effect of stifling private development in the area in question, and discourages major improvement on existing buildings. To give the broad and unlimited interpretation to the redevelopment laws necessary to sustain the action of the City in this case would have a tendency to force deterioration and blight on large sections of the City, thereby bringing about a result exactly opposite to that intended by such law.

11. We are also aware that the Court will not substitute its judgment for that of the City as to how detailed a statement of financing is required to be. But an assurance that there will be adequate financing, *if* long term finance can be secured, is no assurance at all.

/s/ Alvin C. Randall
Judge

IN THE MISSOURI COURT OF APPEALS
KANSAS CITY DISTRICT

No. KCD 26,924

ALLRIGHT MISSOURI, INC., PHIL JACOBS BUILDING CORPORATION and JOSEPH D. CASSATA AND ANNA MARIE CASSATA,
Respondents,
vs.
CIVIC PLAZA REDEVELOPMENT CORPORATION,
Appellant,
and
THE CITY OF KANSAS CITY, MISSOURI and JOHN DANFORTH, ATTORNEY GENERAL OF THE STATE OF MISSOURI,
Defendants.

(Filed June 2, 1975)

Appeal From the Circuit Court of Jackson County
Honorable Alvin C. Randall, Judge

Before Somerville, P.J., Pritchard, C.J., and Turnage, J.

Several owners and lessees of property, hereinafter collectively referred to as "Allright", filed suit for declaratory judgment and injunctive relief to test the validity of Ordinance No. 37349 passed by the City Council of Kansas City, Missouri. The challenged ordinance, inter alia, found and declared that an area within the city, as described in an application filed by the Civic Plaza Redevelopment Corporation, hereinafter referred to as CPRC, was "blighted," approved a development plan proposed by CPRC for the "blighted" area, empowered CPRC to exercise the power of eminent domain for acquisition of the real property in the "blighted" area and granted it "partial relief from taxation" (Section 353.110, RSMo 1969).

Allright made a trenchant attack upon the ordinance —(1) the City Council's finding and declaration that the project area was "blighted" was arbitrary and unreasonable; (2) the City Council's finding and declaration, implied in its approval of the development plan proposed by CPRC, that CPRC's proposed method of financing the project was sufficient was arbitrary and unreasonable; and (3) the project area was not a "blighted" area and therefore the ordinance unconstitutionally clothed CPRC with authority to take private property for private use by investiture of the power of eminent domain in violation of Article I, Sections 2, 13 and 28, and Article VI, Section 21, of the Missouri Constitution, and the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

The trial court entered conclusions of law, accompanied by findings of fact, which, for all practical purposes, vindicated Allright's attack upon the ordinance in all respects, and, accordingly, entered judgment declaring the ordinance void and enjoined its enforcement. CPRC appealed, but the City of Kansas City, Missouri, did not.

Summarized, CPRC maintains the trial court erred in holding the findings and declarations of the City Council to be arbitrary and unreasonable, and, perforce, erred in holding the ordinance to be unconstitutional. It is readily apparent that the principal issue before this court is whether the facts warranted a finding and declaration by the City Council that the project area was "blighted". The viability of any constitutional issues hinge upon the disposal made of the principal issue.

CPRC is an "urban redevelopment corporation" organized and existing under and by virtue of "The Urban Redevelopment Corporations Law" of Missouri (Chapter 353, RSMo 1969). It filed an application, subsequently amended,

with the City of Kansas City for development of an allegedly "blighted" area generally described as follows: Bounded on the north by 13th Street, on the south by the Crosstown Freeway, on the west by McGee Street, and on the east by Locust Street between 13th Street and 14th Street and by the junction of the Crosstown Freeway with 14th Street. For those not so familiar with downtown Kansas City, the allegedly "blighted" area lies immediately south and west of the Jackson County Courthouse and southwest of the Federal Office Building.

CPRC's development of the project area contemplated a highrise apartment, hotel and office structure (consisting of "three towers" of approximately twenty-five stories each with enclosed parking), rehabilitation of certain existing buildings, and a fourteen story office building with suitable parking facilities.

It is impossible to properly address the principal issue posed by this appeal without some mention of the deeply rooted allegiance of our forefathers to private ownership of property. The people of this country have long cherished the concept that individual citizens possess certain basic rights, not the least of which is private ownership of property. History tells us that our Democratic government was instituted to protect that right along with other cherished rights. The Fifth Amendment to the Constitution of the United States exemplifies the inviolate nature of the right of private ownership of property: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Of like tenor are Article I, Section 10, of the Constitution of Missouri, providing "[t]hat no person shall be deprived of life, liberty or property without due process of law", and Article I, Section 28, providing that ". . . private property shall not be taken

for private use with or without compensation . . . and that when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined . . ." It is self-evident that the people of this state chose to place limitations on the inherent governmental power of eminent domain to further protect their right to own property free from unrestrained interference.

Until the advent of the Twentieth Century the awesome power of eminent domain was generally limited to the acquisition of private property by public entities for public uses. Highways, sites of government and parks are but a few classic examples of public uses of property. During this century however the concept of urban redevelopment initiated far-reaching changes regarding the inviolability of private ownership of property and investiture of the power of eminent domain. These far-reaching changes first publicly emerged in this state with adoption of the 1945 Constitution of Missouri. Article VI, Section 21 thereof, entirely foreign to any previous Missouri Constitution, provided: "Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest." Collaterally, Article X, Section 7, of the 1945 Constitution of Missouri, likewise foreign to any previous Missouri Constitution, provided: "For the purpose of encouraging . . . the reconstruction, redevelopment and rehabilitation of obsolete, decadent or blighted areas, the general assembly by general law, may provide for such partial relief from taxation of the lands devoted to any such purpose, and of the improvements thereon, by such method or methods, for such period or periods of time, not exceeding twenty-five years in any instance, and upon such terms, conditions, and restrictions as it may prescribe."

Thus, urban redevelopment added new dimensions to previously existing limitations surrounding investiture of the power of eminent domain and effected a degree of retrenchment in the historically inviolate concept of private ownership of property. Elimination of urban blight was constitutionally recognized as serving a proper public purpose and the notion of public use of property was enlarged to entail the taking of private property to accomplish a public purpose.

The Supreme Court of this state has upheld urban redevelopment of blighted areas as a function infused with a public purpose, and, therefore, a proper depository for the power of eminent domain. Annbar Associates v. West Side Revelopment Corp., 397 S.W.2d 635 (Mo. banc 1965).

A critical confrontation between constitutionally protected rights of private owners of property and forced acquisition of their property by private corporations exercising the power of eminent domain is inevitable when urban redevelopment is undertaken by private corporations organized under "The Urban Redevelopment Corporations Law" of Missouri (Chapter 353, RSMo 1969). If urban redevelopment involves acquisition, clearance, and redevelopment of a truly "blighted" area, the rights of private owners of property must yield to the public purpose being served, even though substantial peripheral benefits flow to the private developer of such an area. But if the

area subjected to acquisition, clearance, and redevelopment is not truly "blighted", it is inescapable that the private urban redevelopment corporation is the beneficiary of an unconstitutional investiture of the power of eminent domain regardless of any peripheral benefits that may incidentally flow to the public. When a private urban redevelopment corporation is granted partial tax relief and the power to acquire privately owned property by eminent domain, in an area not truly "blighted", fundamental constitutional rights of private property owners are inescapably violated.

Courts have no choice but to closely scrutinize every legislative determination of blight presented for judicial review because of the ever lurking possibility of an impingement of fundamental individual constitutional rights. Maintenance of the proper balance between legislative will and constitutionally endowed individual rights is a solemn judicial obligation. This does not mean to imply that legislative bodies are suspect of arbitrary or capricious conduct, nor is it meant to imply that judicial review in other types of cases should be anything less. Moreover, judicial review of legislative determinations of blight, when attacked as being arbitrary and unreasonable, is infused with exceedingly stringent demands of care and scrutinization by the very nature of the tightly circumscribed limitations placed upon such review. Anyone undertaking to attack such a determination engages in a herculean task, and of those who do, few succeed. An ordinance embodying a legislative determination of blight is presumed to be valid; although this presumption may be rebutted by showing that the legislative body acted in an arbitrary or unreasonable manner, the burden of doing so clearly rests on the opponent of such an ordinance; if substantial evidence of blight exists a reviewing court cannot interfere with a legislative body's prerogative to exercise judgmental

discretion in determining blight by substituting its own judgment for that of the legislative body; and even though a legislative determination of blight may be said to be "reasonably doubtful or fairly debatable", it must prevail on judicial review if supported by substantial evidence. Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, 518 S.W.2d 11 (Mo. 1974). Ancillary to the foregoing, a finding of fact made without substantial evidence to support it is characterized as arbitrary and unreasonable. Wallin v. State Dept. of Public Health and Welfare, 422 S.W.2d 345, 347 (Mo. banc 1967); Howlett v. Social Security Commission, 149 S.W.2d 806, 809-810 (Mo. banc 1941); Dunnavant v. State Social Security Commission, 150 S.W.2d 1103, 1107 (Mo. App. 1941). Lack of substantial evidence is the trademark of an arbitrary and unreasonable legislative determination of blight.

The formidable task of reviewing the evidence presented to the City Council upon which it made its determination that the proposed project area set forth in CPRC's application was blighted, consistent with the tightly circumscribed limitations (supra) imposed upon such a review and the controlling definition of blight (infra), is now at hand.

CPRC's application was filed pursuant to Chapter 36, Revised Ordinances of Kansas City, Missouri. Chapter 36 of the Revised Ordinances of Kansas City, Missouri, may be said to procedurally complement "The Urban Redevelopment Corporations Law" of Missouri (Chapter 353, RSMo 1969). Section 36.4, of the Revised Ordinances of Kansas City, Missouri, defines "blighted area" as follows: " 'Blighted area' shall mean those portions of the city which the council shall determine, that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have become economic and social liabilities

and that the conditions in such localities are conducive to ill-health, transmission of disease, crime or inability to pay reasonable taxes." Section 36.5.1 of the Revised Ordinances of Kansas City, Missouri, required that CPRC's application "be supported by factual evidence of blight" and that the supporting evidence "be sufficiently complete that city council can make a finding of blight as required by state statute." Section 353.020(2), RSMo 1969, with but slight inconsequential variations, contains a virtually identical definition of "blighted area": "'Blighted area' shall mean that portion of the city, within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes."

Webster's Third International Dictionary, Unabridged, designates "conducive" as an adjective and defines its meaning as "tending to promote". Conducive is used in both the statute and ordinance as a predicate adjective. The common definition of "blighted area", after interpolating the dictionary definition for "conducive" and rearranging the order of certain words, lends itself to being fairly paraphrased as follows: An area which has become an economic and social liability by reason of age, obsolescence, inadequate or outmoded design or physical deterioration tending to promote ill health, transmission of disease, crime or inability to pay reasonable taxes. This paraphrased definition of "blighted area" does no substantive violence to the term as commonly defined by both the statute and the ordinance.

The controlling definition clearly limits a "blighted area" to one that "has become" an "economic and social

liability" to a city. The language, "has become", connotes a fait accompli, not a mere future possibility. The language, "economic and social liability", cast in the conjunctive, denotes an area that "has become" both an economic and a social liability. Adverse social and economic conditions that beset a particular community many times go hand in hand, but such is not invariably the case. Human experience has taught that socially stable communities many times exist in economically depressed areas, and, vice versa, socially unstable areas many times exist in economically affluent areas. A socially unstable area, i.e., one that has become a social liability, standing alone, is not a "blighted" area by the controlling definition, nor is an economically depressed area, i.e., an area that has become an economic liability, standing alone, a "blighted area" by the controlling definition. The two must coexist in point of time in view of the controlling definition.

CPRC, ostensibly in compliance with Section 36.5.1, Revised Ordinances of Kansas City, Missouri, requiring that "any application for approval of a development plan shall be supported by factual evidence of blight" and that such "must be sufficiently complete that [the] city council can make a finding of blight as required by state statute", implemented is application with a two volume "Real Estate Appraisal of Civil Plaza Redevelopment Project" prepared by a professional real estate appraiser. Additionally, a series of photographs of the project area were submitted.

A public hearing on CPRC's application was held by the City Plan Commission of Kansas City, Missouri, as prescribed by Chapter 36 of the Revised Ordinances of Kansas City, Missouri. Thereafter, the City Plan Commission recommended to the City Council that CPRC's application and accompanying development plan be disapproved.

Notwithstanding Allright's contention otherwise, the City Plan Commission's disapproval of CPRC's application was not "conclusively binding" on the City Council that the project area was not blighted. The City Council, after receiving the report of the City Plan Commission, then referred the matter to its Plans and Zoning Sub-Committee and an additional public hearing was held. At both of these hearings violent opposition was lodged against CPRC's application and proposed redevelopment plan by Allright and the other property owners in the area. At these hearings CPRC relied on the two volume real estate appraisal and photographs heretofore referred to. Following the last public hearing the Plans and Zoning Sub-Committee recommended to the City Council that CPRC's amended application and accompanying development plan be approved and that a proper enabling ordinance be passed. Accordingly, Ordinance No. 37349 was passed by the City Council of Kansas City on March 20, 1970.

Insofar as "factual evidence" of blight was concerned, the two volume real estate appraisal and the photographs of the project area which implemented CPRC's application were substantially all the City Council had before it to make the crucial determination of whether the project area was, in fact, "blighted" within the meaning of the controlling definition. A report prepared and submitted to the City Council by its City Development Department, insofar as "factual evidence" of blight was concerned, was nothing more than a condensation of certain property tax statistics relative to the project area otherwise contained in the two volume real estate appraisal.

The two volume real estate appraisal disclosed that the project area consisted of 26 separate tracts of property, one of which was unimproved, twelve of which were utilized for surface parking purposes, and thirteen of which

contained improvements generally described as commercial buildings. Of the latter, nine were one-story buildings, two were two-story buildings, one was a three-story building, and two were six-story buildings. The various buildings are presently occupied by the American Red Cross, Civic Plaza National Bank, an interstate bus line (for garage and storage purposes), a litho-plating company, a business college, a labor union (as its headquarters and business office), a restaurant, a retail paint store and paint warehouse, an engraving plant, a garment manufacturing plant, two gasoline service stations and a combined bar and grill.

This court has been unable to ascertain the existence of any evidence before the City Council, either by way of presentation of factual incidents occurring in the project area or statistical studies related to other areas of the city, to support a finding that "age, obsolescence, inadequate or outmoded design or physical deterioration" were tending to promote "ill health, transmission of disease, crime or inability to pay reasonable taxes". On the other hand, evidence adduced by Allright at the trial demonstrated that "ill health", "disease" and "crime" in the project area were nil by any conceivable standard and CPRC made no serious effort to refute such evidence. It may further be said that on appeal CPRC has, at least tacitly, acknowledged that the age, and in some instances outmoded design and minimal deterioration of the existing buildings, had not tended to promote ill health, transmission of disease or crime. Rather, CPRC seeks to justify the City Council's finding of blight on the premise that the project area had become an economic liability to the City because of its inability to pay reasonable taxes. This premise is untenable in view of the controlling definition of blight, and, additionally, the real estate appraisal submitted by CPRC as "factual evidence" to support a finding

of economic blight by the City Council is convincing evidence of its factual untenability. The referred to report, without equivocation, pointedly stated: "Tax assessments for this area are generally in line with competitive areas in the central business district of Kansas City, Missouri. Tax assessments are generally higher, however, than other parts of the metropolitan Kansas City area".

It is impossible to tell whether the City Council purported to found its naked conclusion of blight set forth in Ordinance No. 37349 on criterions consonant with the controlling definition of blight. This serves to compound the inherent difficulty encountered in trying to verbally portray the negative situation at hand. Nevertheless, even the most cursory examination of the controlling definition of blight suggests certain fundamental evidentiary areas bearing upon blight, if the project area was in fact blighted, which were never presented by CPRC or anyone else to the City Council. By way of example, the City Council was never favored with "factual evidence" pertaining to any of the following matters: (1) the existence of conditions in violation of various safety, zoning, health and building ordinances of the city; (2) the existence of crime adversely disproportionate to other areas of the city; (3) an aberrant number of property tax delinquencies; (4) that public services rendered to the project area were disproportionately higher than like services rendered to other areas of the city; or (5) that the cost of public services rendered to the project area was disproportionate to the amount of municipal taxes being generated by the project area. The evidence which the City Council had before it, at best, merely chronologized the respective age of the various improvements in the project area and disclosed many of them to be old, revealed their design in many instances, as might be expected, to be of another architectural era, and indicated some minimal deterioration had occurred with respect to a small minority of the improvements. The controlling definition of blight contains criterions which the disclosures just mentioned, standing alone, failed to illuminate from an evidentiary standpoint.

CPRC argues, at least inferentially, that recommended approval of its application by the City Council's Plans and Zoning Sub-Committee constituted "factual evidence" to support the City Council's finding of blight. CPRC's argument takes the following course. The members of this committee, four in number, "walked through" the project area prior to passage of the ordinance. One of the members testified at the trial below that based on his "walk through" and the real estate appraisal submitted by CPRC, it was his opinion that the project area was blighted. CPRC subtly infers that the remaining three members of the sub-committee shared a common opinion. CPRC's argument is unpersuasive for a number of reasons. First, the four members of the Plans and Zoning Sub-Committee numerically constituted less than half of the City Council quorum present when Ordinance No. 37349 was passed. Second, the sub-committee member who testified at the trial below failed to iterate any facts observed by him during his "walk through" of the project area from which he opined the area was blighted. Third, the record is devoid of evidence that any of the four sub-committee members ever related any factual matters observed by them during their "walk through" of the project area to the City Council. The legal sterility of CPRC's argument is obvious. Arcane evidence cannot be said to rise to the dignity of substantial evidence. For all practical purposes the City Council was relegated solely to the real estate appraisal and submitted photographs from which to determine the existence or non-existence of blight in the project area.

The record before this court, viewed in its entirety, compels the conclusion that no substantial "factual evidence" was presented by CPRC, or anyone else, to the City Council from which it could find that age, obsolescence, inadequate or outmoded design or physical deterioration in the project area was so advanced and so pervasive as to render it an economic and social liability to the city because of a tendency to promote "ill health, transmission of disease, crime or inability to pay reasonable taxes". It necessarily follows that passage of the ordinance under attack constituted an arbitrary and unreasonable act on the part of the City Council and the trial court correctly declared said ordinance to be invalid.

This conclusion is by no means intended to impugn the motives of the City Council in passing Ordinance No. 37349. Perhaps it was unduly swayed by an apparent opportunity to economically and aesthetically improve the project area. A City Council cannot be criticized for harboring such a desire. However, passage of an enabling urban redevelopment ordinance, granting the awesome power of eminent domain to private persons or entities to implement it, cannot be legally condoned unless the affected area is in fact blighted. Such ordinances can never be justified solely on the ground that a better economic and more aesthetically pleasing use of an area may be effected. If the latter is not true, then unblighted areas become ripe for exploitation under the guise of urban redevelopment. When this occurs, constitutionally protected rights of individual property owners are profaned and constitutional limitations surrounding exercise of the power of eminent domain are rendered meaningless.

The trial court's findings and conclusion of law that the City Council acted in an arbitrary and unreasonable manner in passing Ordinance No. 37349 (because there

was no substantial evidence that the project area was blighted) is affirmed. Therefore, it is unnecessary to discuss in detail the remaining contentions of error urged by CPRC. It is axiomatic that passage of an ordinance empowering a private urban redevelopment corporation to acquire property in an unblighted area by eminent domain violates Article I, Section 28, of the 1945 Constitution of Missouri: ". . . private property shall not be taken for private use with or without compensation, unless by consent of the owner . . ."

Judgment affirmed.

All concur.

Ronald L. Somerville, Presiding Judge

IN THE SUPREME COURT OF MISSOURI
EN BANC

No. 59,180

ALLRIGHT MISSOURI, INC., PHIL JACOBS BUILDING CORPORATION and JOSEPH D. CASSATA and ANNA MARIE CASSATA,
Plaintiffs-Respondents,

vs.

CIVIC PLAZA REDEVELOPMENT CORPORATION,
Defendant-Appellant,

and

THE CITY OF KANSAS CITY, MISSOURI and JOHN DANFORTH, Attorney General of the State of Missouri,
Defendants.

(Filed June 14, 1976)

Appeal From the Circuit Court of Jackson County
The Honorable Alvin C. Randall, Judge

This is an action in which plaintiffs-respondents seek: (1) a judgment declaring certain statutes of the state, ordinances of the city of Kansas City, and a contract of the city with defendant-appellant unconstitutional and void; and (2) an injunction enjoining all defendants from proceeding with a redevelopment project described in one of the ordinances. Judgment was for plaintiffs and one of the defendants appealed to the Missouri Court of Appeals, Kansas City district. That court affirmed the judgment. On application of defendant-appellant we ordered the case transferred to this court. We reverse and remand.

The plaintiffs, Allright Missouri, Inc., Phil Jacobs Building Corporation and Joseph D. and Anna Marie Cassata[1] (hereinafter referred to collectively as Allright) are owners or lessees of property located within a part of the business district of defendant, Kansas City (hereinafter the City), proposed for redevelopment by defendant-appellant, Civic Plaza Redevelopment Corporation (hereinafter Civic Plaza). Civic Plaza is an urban redevelopment corporation organized under Chapter 353.[2]

On March 9, 1967,[3] Civic Plaza filed with the city clerk an application for approval of a plan for redevelopment of a part of the business district. An amended development plan was filed April 30, 1969. The area proposed for this redevelopment is described generally as being bounded on the north by 13th street; on the east by Locust between 13th and 14th streets, and the junction of 14th street with the Crosstown Freeway; on the south by the Crosstown Freeway; and on the west by McGee street. The Jackson county courthouse and the public library are immediately north of and across 13th street from the area. One block north of the area is the City Hall and Police Headquarters. The new Federal Office

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1. In addition to these plaintiffs, Research Hospital and Medical Center, also an owner of land within the area proposed for redevelopment, appeared and filed briefs in support of plaintiffs' position in the Court of Appeals and in this court, having been granted leave by the Court of Appeals to file briefs amicus curiae. References to contentions on appeal by Allright will include points briefed by the hospital and medical center.

2. References to chapter or sections of the statutes are to RSMo 1969.

3. Shortly after the filing of Civic Plaza's application, the City, on March 24, 1967, adopted a resolution declaring as blighted and in need of rehabilitation and redevelopment a large area of downtown Kansas City designated in the resolution as "Central Business District Urban Renewal Area." The area proposed for redevelopment by Civic Plaza is within the Central Business District Urban Renewal Area.

building is immediately northeast and across the intersection of 13th and Locust streets. And the Election Board and State Office buildings are immediately east across Locust. The South Humboldt Urban Renewal Project lies generally east and northeast of the area. The Crosstown Center Urban Renewal Project described in Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, 518 S.W.2d 11 (Mo.1974) is one block west of the area.

The area covered by the plan consists of approximately six blocks divided into 26 separate tracts, 12 of which (or 45.4% of the total land area) are surface parking lots. The remaining 14 tracts are occupied by commercial buildings, eight of which are one-story, two are two-story, one is three-story, and two are six-story buildings. In general, the plan calls for the acquisition of all property in the project area and demolition of all buildings, except the Red Cross and Civic Plaza National Bank buildings. These two would be kept intact, but improved to conform to the overall design and scheme of rehabilitation. The plan includes the construction of several new buildings in seven years. Phase 1 includes a six-level parking structure covering two blocks with three 25-story buildings (referred to as Towers) over the parking structure. Phases 2, 3 and 4 include rehabilitation of the Red Cross and Civic Plaza National Bank buildings and the construction of a new parking structure immediately south of those two buildings. Phases 5 and 6 include the construction of underground parking facilities and a park-like green area at ground level. Phase 7 includes the construction of an office building at least 14 stories high. The estimated cost is approximately $50,000,000.

After the amended plan was filed, the application was referred to The City Plan Commission (hereinafter the

Commission). Notice was published that a public hearing would be held to consider the plan on May 22, 1969, at the City Hall. It was held; all proponents and opponents of the plan present and desiring to be heard were heard; thereafter the Commission filed its report recommending that the plan be disapproved for reasons fairly summarized by a committee of the City Council as follows:

"1. The area can be successfully redeveloped without the Urban Redevelopment law.

"2. The development plan does not proceed in an orderly fashion.

"3. The development plan does not adequately describe what will be built in the development area."

Thereafter, the matter of this redevelopment plan (with an ordinance which had been submitted to the Council by the Commission providing for disapproval of the plan) was referred by the City Council to its Committee on Plans and Zoning (hereinafter the Committee) for investigation, consideration, and its recommendation. After publication of notice that it would do so, the Committee held a public hearing on September 25, 1969. Three witnesses testified for and 13 against the plan. In its report of this hearing the Committee referred to and summarized the contentions presented by the opponents as: (1) "that the present property owners did not want to sell their land," and (2) "that the Redevelopment Corporation did not have the financial ability as required by our ordinances to proceed with the project." In addition to this hearing, the Committee held other hearings, public and private, including discussions with the principals of Civic Plaza regarding its financial ability to carry out the project; meetings to view and investigate the project area; and discussions of the project at other meetings and

council sessions. Along with knowledge acquired by its investigation and a transcript of the testimony heard at its September 25, 1969, hearing the Committee also had for consideration in its deliberations two dozen photographs of buildings and open spaces in the project area and a two-volume (estimated to be at least 300 pages) "Appraisal and Blight Study" made and prepared by the Vincent J. O'Flaherty Company for Civic Plaza and filed by it as one of the documents in support of its application. The report and recommendation of the Committee with its findings (and the evidence considered by it) was filed with the city clerk and an oral presentation thereof was made and discussed at a regular meeting of the City Council. With its report the Committee filed a "Committee Substitute for Ordinance No. 37349" and recommended that the substitute "do pass." The Committee's substitute ordinance, adopted by the City Council March 20, 1970, declared (1) that the area is blighted and redevelopment thereof as proposed in Civic Plaza's plan necessary and in the public interest; (2) that Civic Plaza is financially able to undertake and complete the plan as proposed; (3) that acquisition of the properties in the area by Civic Plaza through the power of eminent domain is necessary and in the public interest, and is authorized; (4) that the contract covering the redevelopment project (a copy of which was attached to the ordinance) as proposed and executed by Civic Plaza be executed for and on behalf of the City by its proper officers.

As indicated, the evidence available to and considered by the City Council in making its determination that the area was blighted and that Civic Plaza's proposed project for redevelopment thereof should be approved was voluminous. It related to the area generally and to each property proposed for acquisition. The buildings in the area

range in age from three to over 70 years, most of them being well over 40 years old. Their condition (physical and functional) and the type of maintenance they have received is described in this evidence as "very poor," "poor," "fair," "good" or, in the case of two, a gasoline service station and a one-story bar and restaurant building, as "excellent." The service station is three years old and the bar and restaurant building six. The evidence as to design or architecture of the buildings ranged from "poor," to "outmoded," to "good." The O'Flaherty Company's appraised value of the land and buildings in the area was $4,400,000 of which $3,400,000 was assigned to land. The total assessed value of land and buildings for tax purposes was $506,000 (approximately 12.5% of the total appraised value) which produced annually ad valorem taxes of a little less than $39,000. Some of the witnesses at the hearing before the Committee expressed the opinion that the area was not blighted; others, that it was blighted.

The evidence heard by the trial court was substantially the same as that considered by the City Council.

Allright's position has been from the beginning, and continues to be, in general: (1) that the area described in Civic Plaza's application is not in fact blighted; (2) that Civic Plaza's application was not supported by factual evidence of blight; (3) that the City Planning Commission's disapproval of Civic Plaza's plan is conclusive evidence that the area is not blighted and redevelopment not necessary; and (4) that the finding of blight by the City Council was therefore arbitrary and unreasonable. From these premises, Allright concludes and argues that the ordinance approving Civic Plaza's application and the contract between the City and Civic Plaza executed under authority of this ordinance violate the federal and state

constitutions in that they authorize the taking, by eminent domain, of private property for private use.

The trial court found and concluded that the City Council's determination that the area is blighted was arbitrary and unreasonable. Civic Plaza contends that the court erred in so finding and concluding.

The parties agree that the applicable law is: in determining whether an area is blighted, the City Council acts in its legislative capacity; that, in this case, judicial review is limited to whether the legislative determination was arbitrary, there being no contention that such determination was induced by fraud, collusion or bad faith. Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, 518 S.W.2d 11, 15[1] (Mo.1974); Annbar Associates v. West Side Redevelopment Corporation, 397 S.W.2d 635, 650[9] (Mo.banc 1965); State on inf. of Dalton v. Land Clearance for Redevelopment Authority of Kansas City, 270 S.W.2d 44, 52[2] (Mo.banc 1954).

The issue of whether a legislative determination of blight is arbitrary turns upon the facts of each case. And, the burden of proving that it is arbitrary is upon the party so charging. Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, supra (518 S.W.2d at 16).

The court said in Parking Systems, Inc., supra, that in determining whether this burden of proof has been met, "* * * it must be kept in mind that the courts cannot interfere with a discretionary exercise of judgment in determining a condition of blight in a given area * * * and * * * '[u]nless it should appear that the conclusion of the City's legislative body in the respect in issue * * * is clearly abritrary * * *, we cannot substitute our

opinion for that of the City's * * *. If the City's action * * * is reasonably doubtful or even fairly debatable' we cannot substitute our opinion for that of the City Council." 518 S.W.2d at 16.

The evidence on which the City's legislative body made its determination did not compel a conclusion that the area was blighted and the plan proposed for its redevelopment necessary and in the public interest. Nor did it compel a conclusion that it was not. There was room for reasonable differences of opinion and fair debate on this question. From evidence before it, this legislative body reasonably could have determined, as it did, that the area was "blighted" within the meaning of applicable statutes and ordinances. Hence, it may not be said that the adoption of the ordinance approving Civic Plaza's application amounted to an arbitrary exercise of legislative power. Allright failed to meet its burden of proof.

There is no merit in Allright's contention that the Commission's disapproval of Civic Plaza's plan is conclusive evidence that the area is not blighted and redevelopment not necessary. We note that the Commission's recommendation is not based on a finding that the area was not blighted. In fact its report does not mention what conclusion, if any, it reached on this question. The Commission's recommendation, whatever it may be, clearly is not conclusive or binding on the City Council on the question of whether an area is blighted and its redevelopment necessary and in the public interest. The authority and responsibility for making that determination is vested exclusively in the City's legislative body; not in the Commission. Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, supra (518 S.W.2d at 17-18[9]).

Allright has also taken the position and contended from the beginning that the evidence presented to the Commission, the Committee, and the City Council in support of Civic Plaza's method and means of financing the project was insufficient to support a determination by the City's legislative body that "sufficient funds were immediately available and would be used for the redevelopment project."

Briefly, the evidence as to availability and sufficiency of funds to finance the project consisted of (1) a letter of commitment by Civic Plaza and its principals of certain stock and equities owned by them to guarantee acquisition of the necessary properties; (2) a resolution adopted by the board of Building Leasing Corporation committing itself to lend several million dollars to Civic Plaza for use in this project; (3) a consolidated financial statement of Building Leasing Corporation and Metropolitan Construction Company; (4) a letter from City Bond and Mortgage Company expressing its interest in development of the project and its intent and purpose to secure commitments from its institutional investors for long-term financing of the proposed improvements if the project should be approved by the City; (5) the report of the Committee of the results of its investigation of the financial condition of Civic Plaza and its principals and their ability to make available immediately sufficient funds or securities for normal equity financing of the project proposed.

Allright complains, in particular, that no investigation was made as to the authenticity of these commitments or Civic Plaza's financial ability; that there was no evidence of an audit of the consolidated financial statement referred to above or even an auditor's statement regarding its preparation and authenticity; and that the commitments and

financial statement were mere "wordage and figures typed on a sheet of paper."

It was at least debatable from the record before the City Council that the proposed method of financing redevelopment of the area was adequate and that sufficient funds were available immediately for use as needed for normal equity financing of the project. Hence, it may not be said that adoption of the ordinance approving the application and Civic Plaza's proposed method and plans for financing was an arbitrary exercise of legislative power. Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, supra (518 S.W.2d at 18-20[11, 12]).

Having concluded that the City Council's action in the above respects was not arbitrary, it necessarily follows that the ordinance and contract were not an unconstitutional delegation of the power of eminent domain. Annbar Associates v. West Side Redevelopment Corporation, supra.

The judgment is reversed and the cause is remanded with directions that judgment consistent with this opinion be entered for Civic Plaza.

Fred L. Henley, Judge

APPENDIX B

353.010. Citation of chapter—application

This chapter shall be known and may be cited and referred to as "The Urban Redevelopment Corporations Law", and shall apply to all cities in this state which now have or which may hereafter contain a population of twenty thousand inhabitants or more, according to the last preceding federal decennial census and all constitutional charter cities. Amended by Laws 1969, p. 501, § 1.

353.020. Definitions

The following terms, whenever used or referred to in this chapter shall, unless a different intent clearly appears from the context, be construed to have the following meaning:

(1) **"Area"** shall mean that portion of the city which the legislative authority of such city has found or shall find to be blighted, so that the clearance, replanning, rehabilitation, or reconstruction thereof is necessary to effectuate the purposes of this law. Any such area may include buildings or improvements not in themselves blighted, and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part.

(2) **"Blighted area"** shall mean that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have become economic and social liabilities, and that such conditions are

conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.

(3) **"City"** or **"such cities"** shall mean cities in this state which now have or which may hereafter have a population of twenty thousand inhabitants or more according to the last preceding federal decennial census and all constitutional charter cities.

(4) **"Development plan"** shall mean a plan, together with any amendments thereto, for the development of all or any part of a blighted area, which is authorized by the legislative authority of any such city.

(5) **"Legislative authority"** shall mean the city council or board of aldermen of the cities affected by this law.

(6) **"Mortgage"** shall mean a mortgage, trust indenture, deed of trust, building and loan contract, or other instrument creating a lien on real property, to secure the payment of an indebtedness, and the indebtedness secured by any of them.

(7) **"Real property"** shall include lands, buildings, improvements, land under water, waterfront property, and and any all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including restrictions of record, created by plat, covenant, or otherwise, right-of-way, and terms for years.

(8) **"Redevelopment"** shall mean the clearance, replanning, reconstruction or rehabilitation of any blighted area, and the provision for such industrial, commercial, residential or public structures and spaces as may be appropriate, including recreational and other facilities incidental or appurtenant thereto.

(9) **"Redevelopment project"** shall mean a specific work or improvement to effectuate all or any part of a development plan.

(10) **"Urban redevelopment corporation"** shall mean a corporation organized under the provisions of this chapter, provided, however, that any life insurance company organized under the laws of, or admitted to do business in, the state of Missouri may from time to time within five years after the effective date of this law, undertake, alone or in conjunction with, or as a lessee of any such life insurance company or urban redevelopment corporation, a redevelopment project under this chapter, and shall, in its operations with respect to any such redevelopment project, but not otherwise, be deemed to be an urban redevelopment corporation for the purposes of this section and sections 353.010, 353.040, 353.060 and 353.110 to 353.160. Amended by Laws 1969, p. 501, § 1.

353.060. Urban redevelopment corporation may operate one or more development projects—powers

An urban redevelopment corporation shall operate under this chapter on one or more redevelopment projects pursuant to an authorized development plan, and with respect to each such project shall have such rights, powers, duties, immunities and obligations, not inconsistent with the provisions of this law, as may be conferred upon it by city ordinance duly enacted by the legislative authority of a city affected by this chapter which is authorizing or has authorized such plan; provided, however, that notwithstanding the provisions of this section, such urban redevelopment corporation may, as a redeveloper under the provisions of the land clearance for redevelopment authority law, acquire property, by purchase or lease, from

a land clearance for redevelopment authority as defined in said law, in the manner and under the terms and conditions specified in said law. (L.1945 p. 1242, § 6; L.1951 p. 364, § 1)

353.070 General corporation laws unless conflicting apply

The provisions of the general corporation laws, as presently in effect and as hereafter from time to time amended, shall apply to urban redevelopment corporations, except where such provisions are in conflict with the provisions of this law. (L.1945 p. 1242, § 7)

353.110. Real property exempt from taxation—limitation

1. The real property of urban redevelopment corporations acquired pursuant to this chapter shall not be subject to assessment or payment of general ad valorem taxes imposed by the cities affected by this law, or by the state or any political subdivision thereof, for a period of ten years after the date upon which such corporations become owners of such real property, except to such extent and in such amount as may be imposed upon such real property during said period measured solely by the amount of the assessed valuation of the land, exclusive of improvements, acquired pursuant to this chapter and owned by such urban redevelopment corporation, as was determined by the assessor of the county in which such real property is located, or, if not located within a county, then by the assessor of such city, for taxes due and payable thereon during the calendar year preceding the calendar year during which the corporation acquired title to such real property, and the amounts of such tax assessments shall not be increased during said ten-year period

so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such cities.

2. In the event, however, that any such real property was tax exempt immediately prior to ownership by any urban redevelopment corporation, such assessor or assessors shall, upon acquisition of title thereto by the urban redevelopment corporation, promptly assess said land, exclusive of improvements, at such valuation as shall conform to but not exceed the assessed valuation made during the preceding calendar year of other land, exclusive of improvements, adjacent thereto or in the same general neighborhood, and the amount of such assessed valuation shall not be increased during the ten-year period aforesaid so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such cities. For the next ensuing period of fifteen years ad valorem taxes upon such real property shall be measured by the assessed valuation thereof as determined by such assessor or assessors upon the basis of not to exceed fifty per cent of the true value of such real property, including any improvements thereon, nor shall such valuations be increased above fifty per cent of the true value of such real property from year to year during said period of fifteen years, so long as the real property is owned by an urban redevelopment corporation and used in accordance with an authorized development plan. After said period totalling twenty-five years, such real property shall be subject to assessment and payment of all ad valorem taxes, based on the full true value of the real property; provided, that after the completion of the redevelopment project, as authorized by law or ordinance whenever any

urban redevelopment corporation shall elect to pay full taxes, or at the expiration of said twenty-five-year period, such real property shall be owned and operated free from any of the conditions, restrictions or provisions of this chapter, and of any ordinance, rule or regulation adopted pursuant thereto, any other law limiting the right of domestic and foreign insurance companies to own and operate real estate to the contrary notwithstanding. (L.1945 p. 1242 § 10; L.1947 V.I p. 393)

353.130. Redevelopment corporation may acquire property

1. An urban redevelopment corporation may acquire real property or secure options in its own name or, in the name of nominees, it may acquire real property by gift, grant, lease, purchase, or otherwise.

2. An urban redevelopment corporation shall have the right to acquire by the exercise of the power of eminent domain any real property in fee simple or other estate which is necessary to accomplish the purpose of this chapter, under such conditions and only when so empowered by the legislative authority of the cities affected by this chapter.

3. An urban redevelopment corporation may exercise the power of eminent domain in the manner provided for corporations in chapter 523, RSMo; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provision for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to any city, county, or the state, or any political subdivision thereof may be acquired without its consent. (L.1945 p. 1242 § 12)

353.170. City may acquire, clear, convey or lease property for use in redevelopment project

Any city subject to this chapter shall have power:

(1) To acquire by the exercise of the power of eminent domain, or otherwise, an area designated on a master plan under the authority of the legislative authority of the city as a redevelopment area;

(2) To clear any such real property and install, construct, and reconstruct streets, utilities and any and all other city improvements necessary for the preparation of such area for use in accordance with the provisions of this chapter; and

(3) To sell or lease such real property for use in accordance with the provisions of this chapter. (L.1945 p. 1242 § 16)

Sec. 36.5.1. Supporting evidence of blight.

Any application for approval of a development plan must be supported by factual evidence of blight.

(1) Evidence must relate to area generally.

(2) Evidence must relate to each specific property proposed to be acquired.

(3) Evidence must be sufficient to show that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, the properties involved are either economic or social liability; or are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.

(4) The city plan commission shall analyze the evidence submitted and, to the extent necesssary, conduct its own study in order to prepare a report

to the city council either confirming the conditions of blight or setting out such exceptions or modifications as may be appropriate.

(5) Evidence must be sufficiently complete that city council can make finding of blight as required by state statute. (C. S. No. 36419, § A, 2-28-69)

COMMITTEE SUBSTITUTE FOR ORDINANCE

NO. 37349

APPROVING WITH CERTAIN CONDITIONS AND RESTRICTIONS THE AMENDED DEVELOPMENT PLAN SUBMITTED BY THE CIVIC PLAZA REDEVELOPMENT CORPORATION; DECLARING THE AREA INCLUDED IN SUCH PLAN TO BE A BLIGHTED AREA AND ITS REDEVELOPMENT NECESSARY FOR THE PRESERVATION OF PUBLIC PEACE, PROPERTY, HEALTH, SAFETY, MORALS AND WELFARE; AUTHORIZING THE DIRECTOR OF FINANCE TO ENTER INTO A CONTRACT WITH THE CIVIC PLAZA REDEVELOPMENT CORPORATION; AUTHORIZING THE MAYOR TO ISSUE A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; AUTHORIZING THE CIVIC PLAZA REDEVELOPMENT CORPORATION TO ACQUIRE CERTAIN PROPERTY BY THE EXERCISE OF EMINENT DOMAIN.

WHEREAS, the Civic Plaza Redevelopment Corporation, and Urban Redevelopment Corporation of Missouri, organized under and pursuant to the Urban Redevelopment Corporations Act of 1945 did on March 9, 1967, file a development plan with the City Clerk which contemplated the redevelopment of an area generally between

13th Street on the north, Crosstown Freeway on the south, McGee Street on the west and Cherry on the east; and

WHEREAS, the Civic Plaza Redevelopment Corporation did on April 30, 1969, file an amended development plan for the same area; and

WHEREAS, public notice was published advertising a public hearing on said Development Plan in The Daily Record on May 13, 1969, stating that the hearing would be held on May 22, 1969, before the City Plan Commission; and

WHEREAS, the City Plan Commission, with a quorum of its members present, did hold a public hearing at 8:30 a.m. on May 22, 1969; and

WHEREAS, subsequent to the public hearing on June 19, 1969, at a meeting of the City Plan Commission with a quorum of the Commission members present, the Commission voted to recommend to the City Council that the Development Plan be disapproved for the reasons stated in its report included herein; and

WHEREAS, the City Plan Commission did cause an ordinance to be introduced to disapprove said Development Plan; and

WHEREAS, this ordinance was also introduced to approve the Development Plan; and

WHEREAS, both ordinances were referred to the Plans and Zoning Committee for a public hearing and further investigation; and

WHEREAS, the Plans and Zoning Committee after proper public notice, held a public hearing on said Development Plan on September 25, 1969; and

WHEREAS, the Plans and Zoning Committee ordered and conducted additional investigation of the Development Plan and of the financial capacity of the Civic Plaza Redevelopment Corporation; and

WHEREAS, the Plans and Zoning Committee having further studied the development plan and the financial ability of the Redevelopment Corporation are satisfied the Development Plan is feasible and the corporation is financially able to complete the project for the good of the City as a whole, if certain conditions and restrictions on said Development Plan are effected by contract, NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Amended Development Plan submitted by the Civic Plaza Redevelopment Corporation dated April 30, 1969, as set forth below is hereby approved, subject to the conditions and restrictions of the contract referred to in Section 3 hereof.

Section 2. That the Council hereby finds and declares that the area described in the Amended Development Plan submitted by the Civic Plaza Redevelopment Corporation is a blighted area and that the clearance, redevelopment, replanning, rehabilitation and reconstruction thereof are necessary for the public convenience and necessity. That the acquisition by the exercise of the power of eminent domain by the Civic Plaza Redevelopment Corporation of the real property described in Section 1 of said Amended Development Plan is for the public convenience and necessity and that the approval of the Amended Development Plan and construction of the Redevelopment Project are necessary for the preservation of the public peace, property, health, safety, morals and welfare.

Section 3. That the Director of Finance be and is hereby authorized and directed on behalf of the City to enter into the contract with the Civic Plaza Redevelopment Corporation which said contract is on file in the office of the City Clerk as Document No. 2414. Said contract is incorporated herein by reference.

Section 4. That the Council hereby determines that the public convenience and necessity will be served by the Amended Development Plan filed by the Civic Plaza Redevelopment Corporation and by the Redevelopment Project and hereby grants to the Civic Plaza Redevelopment Corporation a Certificate of Public Convenience and Necessity authorizing and empowering the said corporation to acquire by the exercise of eminent domain the real property within the development area of the project as described in Section 1 of the Amended Development Plan. The Mayor be and is hereby authorized to execute and deliver said Certificate to the Civic Plaza Redevelopment Corporation.

Approved as to form and legality:

/s/ Richard N. Ward
Associate City Counselor

Authenticated as Passed this March 20, 1970.

/s/ Clark A. Redpath
Mayor

/s/ H. Edward Bird
City Clerk

/s/ I. Allen
Deputy City Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-397

ALLRIGHT MISSOURI, INC., PHIL JACOBS BUILDING CORPORATION AND JOSEPH D. CASSATA AND ANNA MARIE CASSATA,

Petitioners,

vs.

CIVIC PLAZA REDEVELOPMENT CORPORATION, THE CITY OF KANSAS CITY, MISSOURI, AND JOHN DANFORTH, ATTORNEY GENERAL OF THE STATE OF MISSOURI,

Defendants.

BRIEF OF DEFENDANT-RESPONDENT, CIVIC PLAZA REDEVELOPMENT CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

ARGUMENT

The Supreme Court of Missouri has not decided a Federal question; Petitioners' contention of violation of Fourteenth Amendment rights is not in accord with applicable decisions of this Court.

Petitioners contend that they should be protected from arbitrary and unreasonable legislative actions which deprive them of their property rights. However, they failed to prove that the City Council of Kansas City, Missouri

was arbitrary and unreasonable when it declared the area in question blighted. As set forth at page 8 of Petitioners' Petition "* * * parties seeking to void a municipal ordinance must carry the burden of proof * * * that burden of proof is a heavy one and requires a showing upon clear and cogent evidence that a legislative body was arbitrary and unreasonable in using its determination." The Missouri Supreme Court stated "Allright (Petitioners) failed to meet its burden of proof." Appendix A37.

The Missouri Supreme Court, en banc, at A36, stated the law as it applies to review of legislative determinations, to-wit:

> "The parties agree that the applicable law is: in determining whether an area is blighted, the City Council acts in its legislative capacity; that, in this case, judicial review is limited to whether the legislative determination was arbitrary, there being no contention that such determination was induced by fraud, collusion or bad faith. Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, 518 S.W.2d 11, 15(1) (Mo. 1974); Annbar Associates v. West Side Redevelopment Corporation, 397 S.W.2d 635, 650(9) (Mo. banc 1965); State on inf. of Dalton v. Land Clearance for Redevelopment Authority of Kansas City, 270 S.W.2d 44, 52(2) (Mo. banc. 1954).
>
> The issue of whether a legislative determination of blight is arbitrary turns upon the facts of each case. And, the burden of proving that it is arbitrary is upon the party so charging. Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation, supra (518 S.W.2d at 16).
>
> The Court said in Parking Systems, Inc., supra, that in determining whether this burden of proof has been met, '* * * it must be kept in mind that the courts cannot interfere with a discretionary exercise of judgment in determining a condition of blight in a given area * * * and * * * (u)nless it should appear that the conclusion of the City's legislative body in the respect in issue * * * is clearly arbitrary * * *, we cannot substitute our opinion for that of the City's * * *. If the City's action * * * is reasonably doubtful or even fairly debatable' we cannot substitute our opinion for that of the City Council. 518 S.W.2d at 16."

Notwithstanding the above established principle of law, Petitioners contend that they received no protection under the law and that their Fourteenth Amendment Rights were violated. Nevertheless, Petitioners failed to show by clear and cogent evidence that the City Council's actions were arbitrary and unreasonable.

Petitioners, at page 7, state, "As can be seen from the appellate opinions attached to this Petition, only the barest minimum evidence supporting the redevelopment project was presented to the City Council of Kansas City, Missouri, yet when tested by the standard of review used by the Missouri Supreme Court, minimal evidence was held sufficient to uphold the legislative finding."

Petitioners use "barest minimum of evidence" and "minimal evidence", and yet have failed to overcome the evidence and carry their burden of proof.

With regard to questions of evidence, the Missouri Supreme Court, however, stated at A34: "As indicated, the evidence available and considered by the City Council in making its determination that the area was blighted and that Civic Plaza's proposed project for redevelopment thereof should be approved was *voluminous*." (Emphasis ours).

At page 11, Petitioners state, "The Supreme Court of Missouri, in its opinions in *Parking Systems*, supra, and in this case, has stated that any *threadbare* evidence regarding blight is sufficient if a reasonably doubtful or fairly debatable question of fact arises." It must be noted that after careful review of said cases, we have found *no* such references to the sufficiency of "*threadbare evidence*" nor did the Supreme Court of Missouri even mention "*threadbare evidence*" in its opinion. (Emphasis ours).

The Missouri Supreme Court *did not* affirm the legislative determination of blight on "bare minimum evidence", "minimal evidence" or "threadbare evidence." To the contrary, it stated that if the action is reasonably doubtful or even fairly debatable, it will not substitute its opinion for that of the City Council. The Petitioners could not and did not prove that the City Council action was *not* reasonably doubtful or *not* even fairly debatable. The Petitioners failed to prove that the City Council action was clearly arbitrary and unreasonable. (Emphasis ours).

The Petitioners' Constitutional rights were not invaded nor did the Supreme Court of Missouri err in its judgment in this case.

Petitioners refer to *Annbar Associates* v. *Westside Redevelopment Corporation*, 397 S.W.2d 635 (Mo. en banc 1965) in its Petition (page 7) which case is also cited by the Missouri Supreme Court at A36. The *Annbar* case, involving Urban Redevelopment, set forth the scope of review of a legislative body's actions by the Courts. The *Annbar* case was later appealed to this Court. The motion to dismiss was granted and the appeal was dismissed for want of a substantial federal question in 385 U.S. 5, decided October 10, 1966.

This case, as the *Annbar* case, supra, does not involve a substantial federal question.

Petitioner cites no grounds for invoking this Court's discretion to grant a writ of certiorari.

It is respectfully submitted the petition should be denied.

CONCLUSION

For the reasons and authorities cited above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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